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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Section 25
of the Cable Television Consumer
Protection and Competition Act
of 1992

Direct Broadcast Satellite
Public Service Obligations

MM Docket No. 93-25

To: The Commission

REPLY COMMENTS OF WGBH EDUCATIONAL FOUNDATION

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July 14, 1993

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SUMMARY

WGBH urges the Commission, in implementing the carriage obligations mandated by Congress in Section 25(b) of the 1992 Cable Act, to define the term "noncommercial educational and informational programming" in a manner that allows advertiser-supported programming provided by a non-profit institution that is engaged primarily in the production or distribution of educational and informational programming to qualify for access to the channel capacity that must be reserved by DBS service providers. Such a definition would be consistent with Congressional intent to promote the production of educational and informational programming by non-profit entities and to increase the availability of such programming to the public. As public and philanthropic funding for educational and informational programming diminishes and becomes less reliable, non-profit entities will be unable to produce or acquire educational and informational programming unless they associate with commercial sponsors. Such programmers should be given access to reserved channel capacity on DBS services for their advertiser-supported programming.

Also, the Commission should exclude from this definition, and thus from access to the channel capacity reserved pursuant to Section 25(b), programming provided by any programmer that is a for-profit entity or is controlled by a for-profit entity. Congress traditionally has defined "noncommercial" to include a non-profit component, and did not

intend for non-profit entities to compete for reserved channel capacity with for-profit programmers. A DBS service provider should not be permitted to utilize for-profit networks as a means of fulfilling its public interest obligations.

Alternatively, the Commission should exercise the authority vested in it by Section 25(a) of the 1992 Cable Act to impose an additional public service obligation on DBS service providers requiring each provider to reserve a percentage of its channel capacity for advertiser-supported educational and informational programming provided by non-profit entities.

Finally, WGBH urges the Commission not to impose any minimum rate that a DBS service provider must charge for access to the channel capacity it has set aside for educational and informational programming pursuant to the Commission's rules. Congress directed the Commission to ensure that the rate for such access did not exceed a given level, but did not intend for the Commission to set a minimum rate that must be charged.

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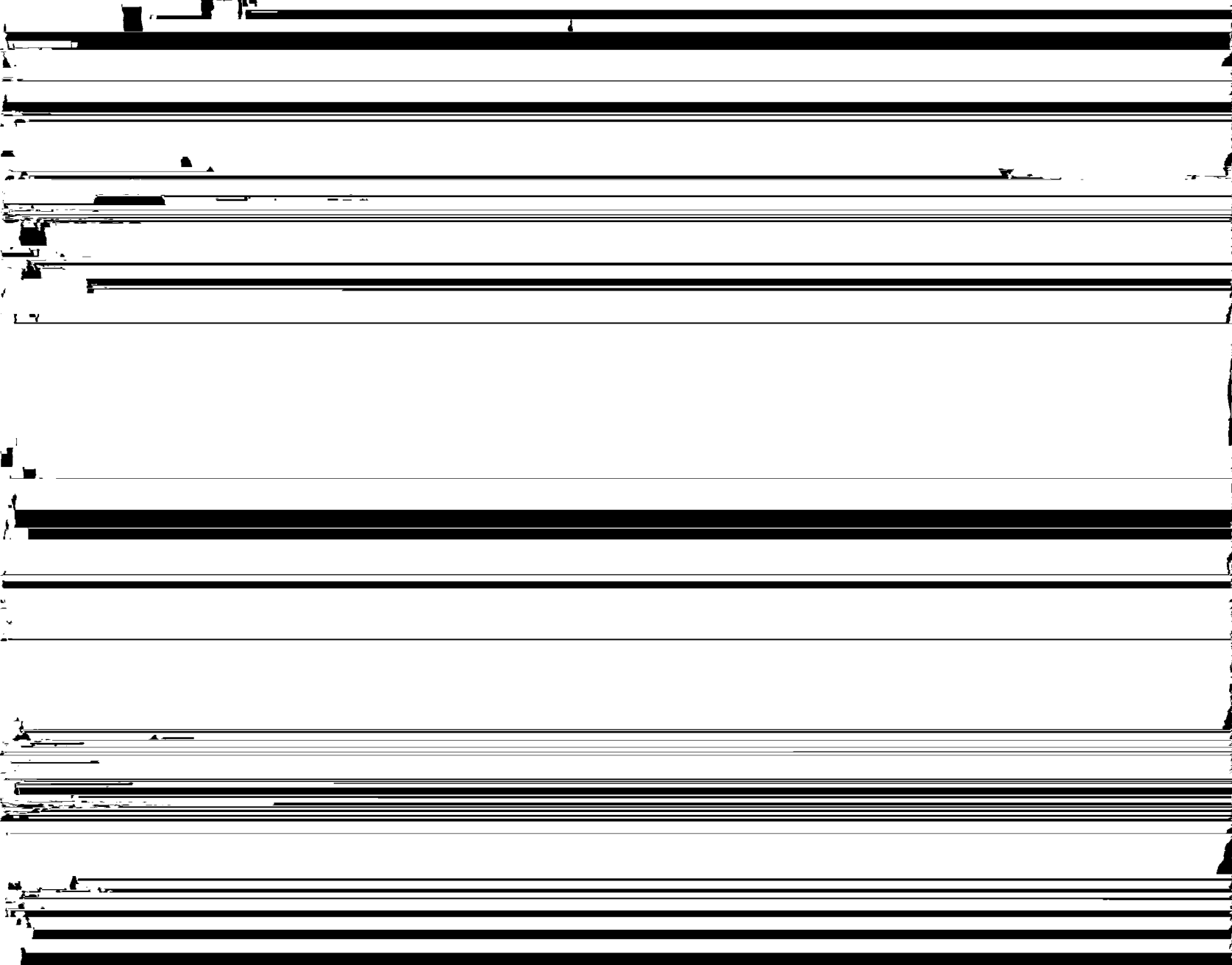
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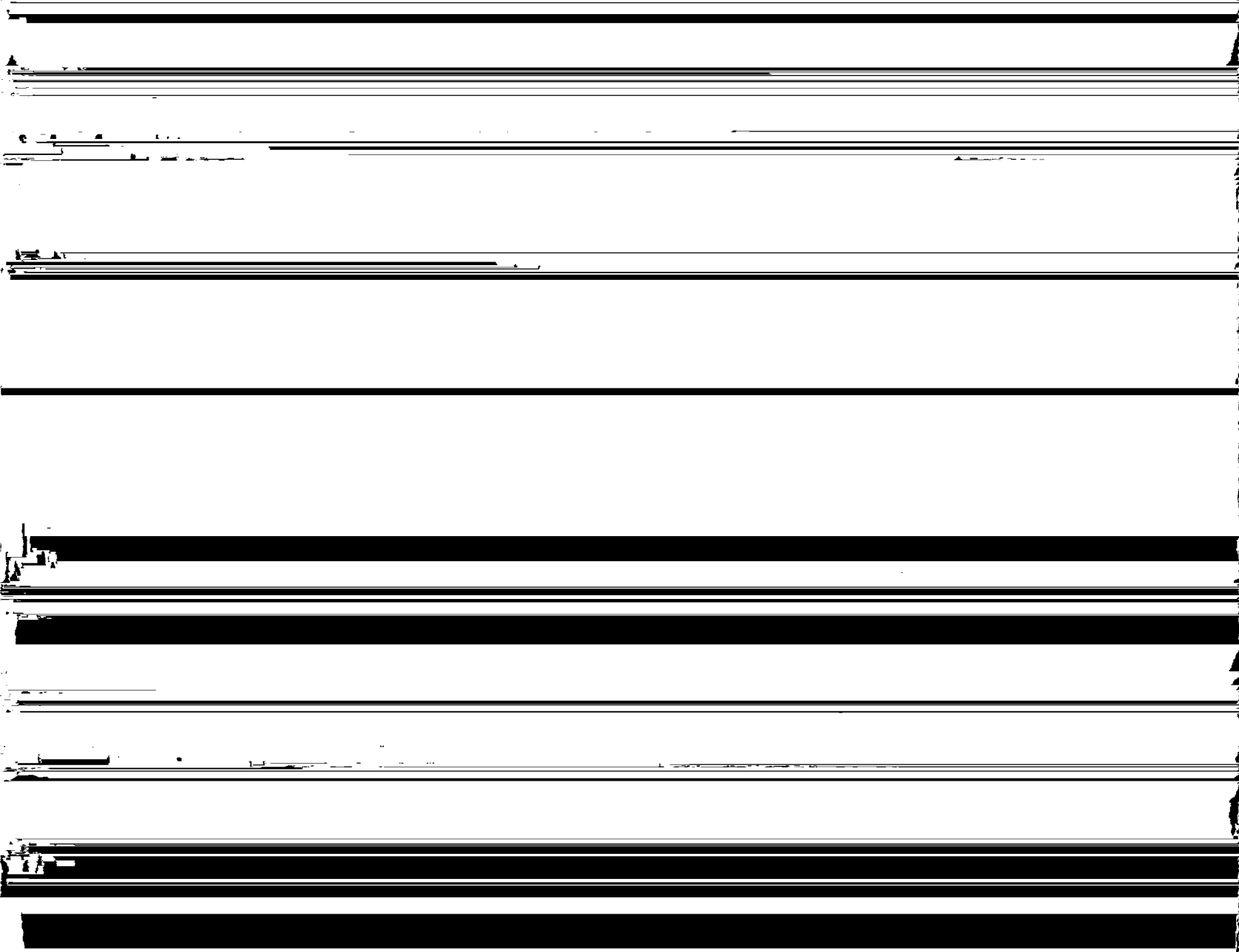
WGBH Educational Foundation (WGBH) hereby files these reply comments to comments filed in the above-captioned docket on or before May 24, 1993, in response to the Notice of Proposed Rule Making, issued March 2, 1993, FCC Notice No. 93-91, in this docket concerning the public service obligations of direct broadcast satellite (DBS) service providers under the 1992 Cable Act.^{1/} Specifically, WGBH urges that the Commission: 1) define "noncommercial educational and informational programming" to include advertiser-supported programming provided by a non-profit institution that is engaged primarily in the production or distribution of educational or cultural programming, and to exclude programming by any for-profit programmer or any programmer controlled by a for-profit entity; 2) alternatively, exercise

^{1/}Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1471.

its public interest authority under the 1992 Cable Act to impose an additional public interest requirement mandating that DBS service providers reserve channel capacity for advertiser-supported educational and informational programming provided by a non-profit entity primarily engaged in the production and distribution of educational and informational



devoted to public affairs coverage. HORIZONS CABLE NETWORK will be designed to give Americans increased access to the nation's greatest thinkers, scientists, authors, artists, and teachers. The network, which will be launched in late 1994, will tap into the major educational and cultural events offered each day at the nation's leading universities, museums, libraries, and arts centers. Public broadcasters



- II. The Commission Should Define "Noncommercial Educational and Informational Programming" In Section 25(b) of the 1992 Cable Act to Include Advertiser-Supported Programming Provided by Non-Profit Educational and

Each year, support for non-profit educational and informational programming becomes more difficult to obtain.^{4/} WGBH is concerned that as government and foundational support for educational and informational programming continues to become more scarce and less reliable, such programming will become impossible to produce and distribute without some association with advertisers.

WGBH understands that in light of the fiscal

grants is fierce; WGBH does not believe that HORIZONS CABLE NETWORK will be viable if the network must rely solely or even largely on philanthropic support. Thus, WGBH has concluded that HORIZONS CABLE NETWORK will be viable only if it associates with advertisers.

The language of Section 25(b) does not foreclose a set-aside for non-profit, yet advertiser-supported educational and informational programming. The term "commercial" has several meanings. While the term can mean advertiser-supported, it also can mean "having profit as the primary

WGBH Webster's New International Dictionary of the English

disagrees. The term noncommercial in Section 25(b) should be interpreted to mean not-for-profit. Congress's central purpose in enacting Section 25(b) was to ensure that the public had access to "a minimum level of educational programming." See H.R. Conf. Rep. No. 862, 102d Cong., 2d Sess. 100 (1992). Thus, as the Educational Broadcasting Corporation has noted, the Commission should "implement[] DBS' noncommercial carriage obligations so as to foster the maximum possible utilization of the DBS medium by educational programmers." Comments of Educational Broadcasting Corporation at 1. WGBH's proposed definition of noncommercial educational and informational programming would further this principle by allowing non-profit educational programmers, such as HORIZONS CABLE NETWORK, to qualify for the Section 25(b) set-aside while relying on promotion fees to defray the cost of producing or acquiring educational and informational programming.

WGBH urges the Commission also to exclude for-profit entities and programmers controlled by for-profit entities from access to any channel capacity set aside pursuant to Section 25(b).^{5/} Congress traditionally has intended the definition of "noncommercial" to include a non-profit or municipal element. Thus, when Congress defined "noncommercial educational broadcast station" in Section 397(6) of the

^{5/} Thus, for example, a for-profit entity should not be able to qualify for the set-aside merely by creating a non-profit entity to produce and market the programming.

Communications Act it limited that term to those stations "owned and operated by a public agency or nonprofit private foundation" or a municipality; similarly, in Section 397(7) of the Communications Act Congress defined "noncommercial telecommunications entity" as an enterprise that "is owned and operated by a state, a political or special purpose subdivision of a state, a public agency, or a nonprofit private foundation, corporation, or association." Thus, it is likely that when Congress directed the Commission to impose regulations setting aside channel capacity on DBS services for noncommercial educational and informational programmers, it did not intend that non-profit entities such as public television stations would have to compete for use of this capacity with for-profit entities such as Discovery Communications.

Discovery Communications argues that any entity that provides programming of an educational or informational nature should be given access to the DBS capacity set aside under Section 25(b). "The type of programmer providing the desired programming should be irrelevant." Comments of Discovery Communications at 7. WGBH strongly believes the type of programmer is relevant when considering who should have access to channel capacity that is set aside in the public interest. Purely educational or informational programming cannot be maintained in a for-profit environment. The profit motive inevitably alters the for-profit entity's concept of

"educational" television and affects the content of the programming. Moreover, WGBH is concerned that for-profit entities such as Discovery Communications will seek to market their purely commercial and for-profit product to DBS service providers as a means for the provider to fulfill its educational programming public service requirements. Thus, WGBH views with suspicion Discovery Communication's proposal that the Commission adopt a "channel equivalent" approach that would allow a DBS service provider to fulfill part of its

public interest.^{6/} At a minimum, Section 25(a) requires the Commission to apply the reasonable access provisions of

extent that such programming is not accommodated in the set-aside mandated by Section 25(b). This requirement is essential to promote the feasibility of such programming and to increase the total amount of educational and informational programming available to the public.

IV. The Commission Should Not Impose A Minimum Rate That DBS Service Providers Must Charge for Access to Channel Capacity Set Aside for Educational and Informational Programming.

Section 25(b) of the 1992 Cable Act provides also that DBS service providers shall meet the obligation to set aside four to seven percent of their channel capacity for noncommercial programming of an educational or informational nature by making channel capacity available to national educational programming suppliers upon reasonable prices, terms, and conditions, as determined by the Commission. Congress directed the Commission not to allow the price of this access to exceed fifty percent of the direct costs of making the channel capacity available.

WGBH submits that Congress did not intend for the Commission to set a minimum rate that DBS service providers must charge for access to the channels set aside for educational programmers. WGBH endorses NATOA's comments on

this matter. "Section 25(b)(4) states that the rate may not

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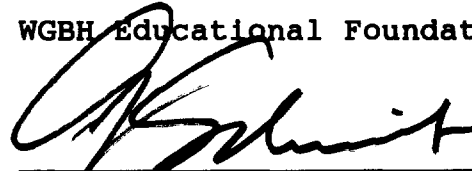
impose a rate on any educational or informational programmer
. . . for access to channel capacity set aside pursuant to
Section 335(b)(1)." NATOA Comments at 18.

V. Conclusion

WGBH respectfully recommends that the Commission adopt rules for DBS public service obligations consistent with the proposals contained in these comments.

Respectfully submitted,

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